

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

**Complaint on Sunday
and Holiday Collections**

Docket No. C2001-1

**DOUGLAS F. CARLSON
RESPONSE TO POSTAL SERVICE REPLY
TO ANSWER IN OPPOSITION TO MOTION TO DISMISS**

January 4, 2001

I. INTRODUCTION

On October 27, 2000, I filed a complaint on Sunday and holiday collections ("Carlson Complaint").¹ The Postal Service filed an answer and motion to dismiss on November 27, 2000 ("Postal Service Answer").² On December 14, 2000, I filed an answer in opposition to the Postal Service's motion to dismiss ("Carlson Opposition").³ Then, on December 22, 2000, the Postal Service filed a reply to my answer in opposition to the Postal Service's motion to dismiss my complaint ("Postal Service Reply").⁴ I hereby reply to the Postal Service's reply.⁵

¹ Douglas F. Carlson Complaint on Sunday and Holiday Collections (filed October 27, 2000).

² Answer of the United States Postal Service and Motion to Dismiss (filed November 27, 2000)

³ Douglas F. Carlson Answer in Opposition to Postal Service Motion to Dismiss (filed December 11, 2000).

⁴ Reply of the United States Postal Service to Douglas F. Carlson Answer in Opposition to Postal Service Motion to Dismiss (filed December 22, 2000).

⁵ The Postal Service filed its procedurally extraordinary reply on December 22, 2000. The certificate of service indicates that the Postal Service served the document to me on December 22, 2000. However, I did not receive the hard copy until January 2, 2001. I was unable to access the electronic version on the Commission's Web site until December 27, 2000. Due to work obligations in Berkeley, California, and pre-existing holiday plans, I was unable to file this reply by December 29, 2000, technically the deadline.

The Postal Service indicated that it will not oppose this reply as untimely. Motion of the United States Postal Service for Leave to Reply to Douglas F. Carlson Answer in Opposition to Postal

After alleging that my complaint and answer are "difficult to entangle," Postal Service Reply at 3, the Postal Service then proceeds, yet again, to twist the facts, this time quoting my opposition out of context in order to manufacture inconsistencies. The Postal Service's latest pleading represents little more than a second round of smoke and mirrors. The Postal Service even creates some hypothetical scenarios and speculates on my response to them⁶; however, resolution of these hypothetical problems is unnecessary for evaluating the straightforward issues in this complaint.

II. SUMMARY OF COMPLAINT

The introduction to my opposition to the Postal Service's motion to dismiss summarizes this complaint succinctly. Carlson Opposition at 1–3. Without repeating the entire discussion, I will highlight the salient facts.

When the Postal Service eliminated collection and processing of outgoing First-Class Mail on many holidays, the Postal Service changed the nature of postal services on a nationwide or substantially nationwide basis without first obtaining an advisory opinion from the Commission, as section 3661 of the Postal Reorganization Act requires. By doing so, the Postal Service also now fails to provide the level of collection service that the POM requires. The POM implements the Act's mandate to provide efficient collection services; thus, the POM contains policies of the Act. See 39 U.S.C. §§ 403(b), 404(1), and 401(2); 39 C.F.R. § 211.2(a)(2); and POM 8, July 16, 1998, preface page.

In addition, the Postal Service fails to provide the level of collection service on Christmas Eve and, sometimes, New Year's Eve that the POM requires. Finally, the Postal Service failed to obtain an advisory opinion from the Commission before eliminating collection and processing of outgoing mail on Sundays.

Service Motion to Dismiss at fn. 1 (filed December 22, 2000). Therefore, if a motion for late acceptance is necessary, I move for late acceptance based on the delay in my receipt of the Postal Service's reply and the recent New Year's holiday.

⁶ See, e.g., Postal Service Reply at 6, fn. 2, and 7.

These procedural and substantive shortcomings give rise to this complaint. Section 3662 permits interested parties to file a complaint with the Commission if they are “not receiving postal service in accordance with the policies of this title.” Relevant to this complaint are two possible ways in which customers may not be receiving postal service in accordance with the policies of title 39. First, the POM implements a specific policy mandate contained in the Act: to provide efficient collection services. If the Postal Service is failing to provide customers with the POM-mandated level of collection services, customers may file a service complaint. Second, if the Postal Service changes the nature of postal services without first obtaining an advisory opinion from the Commission, customers who have been denied the right to provide input on these changes in postal services are no longer receiving postal services in accordance with the policies of the Act. My service complaint clearly is valid under section 3662.

The Postal Service’s reply contains a variety of irrelevant and misleading discussions. Nonetheless, responses to a few points will clarify the issues in this complaint.

III. HOLIDAY SERVICE IS INCONSISTENT WITH POLICY

The Postal Service tries to dismiss this complaint by arguing that current holiday mail service is consistent with longstanding policy. This assertion, however, mixes two discrete issues. First, has the Postal Service *changed* the nature of collection and processing of outgoing First-Class Mail on holidays without first obtaining an advisory opinion from the Commission under section 3661? The answer clearly is yes, since these holiday services have disappeared in recent years on many holidays. See Postal Service Answer at 6, ¶¶ 14 and 15. Therefore, customers such as I are not receiving postal services in accordance with the policies of the Act because the Postal Service changed the nature of a postal service — holiday mail service — without first seeking an advisory opinion from the Commission.

The second issue is whether the Postal Service's failure to collect and process outgoing First-Class Mail on holidays is inconsistent with the policies of the Act. The POM contains the relevant policies since the POM implements the Act's mandate to the Postal Service to provide collection services. See 39 U.S.C. §§ 403(b), 404(1), and 401(2); 39 C.F.R. § 211.2(a)(2); and POM 8, July 16, 1998, preface page. If current service levels are inconsistent with the POM, a complaint under section 3662 is valid.

On this second issue, the POM requires collection and processing of outgoing First-Class Mail on holidays. Exhibit 125.22 describes the required service levels, and sections such as 322.233 and 323.343 require collections at certain types of collection boxes on holidays. Written at a time when holiday collection and processing services were the norm, the POM clearly envisions collection and processing of outgoing First-Class Mail on holidays.

Footnote 1 of Exhibit 125.22 permits the chief operating officer and executive vice president to approve exceptions to the POM-mandated service levels. The Postal Service seizes upon this exception⁷ and now suggests that the POM allows exceptions so broad and sweeping that they swallow the main policy. In other words, the Postal Service apparently reads the POM as requiring collections and processing of outgoing mail from particular types of collection boxes on holidays; nonetheless, consistent with these elaborate prescribed service levels, postal managers may deviate so significantly from the core policy to collect and process outgoing mail on holidays that *not* collecting and processing outgoing mail on holidays is still consistent with the policy because the policy allows for exceptions.

The Postal Service's interpretation of the POM is not plausible. Consider the dictionary definition of "exception": "a case to which a rule, general principle, etc. does not apply."⁸ The Postal Service's decision not to collect and process outgoing First-Class Mail on many holidays is not a mere "exception" to a

⁷ See, e.g., Postal Service Reply at 3.

⁸ *Webster's New World Dictionary*, Second College Edition.

“general principle” because the general principle now is *not* to collect and process outgoing First-Class Mail on many holidays. The exception on which the Postal Service rests its defense to this complaint is now, in fact, the de facto rule and general principle. Under any reasonable reading of the POM, however, the POM requires collection and processing of outgoing First-Class Mail on holidays, except for occasional, limited exceptions. The Postal Service is not, in fact, providing this service. Therefore, this complaint is valid under section 3662.

In sum, the Postal Service changed the nature of holiday collection service without first obtaining an advisory opinion from the Commission. Moreover, the Postal Service is not providing the level of holiday collection service that the POM requires. For both of these reasons, this complaint is valid under section 3662.

IV. RELEVANCE OF THE POM

In support of its contention that the Postal Service should not be bound to provide customers with the level of collection service that the POM requires, the Postal Service suggests that I have highlighted the “fundamental irrelevance of the POM to this dispute.” Reply at 6. The Postal Service quotes my opposition, where I wrote that the “issue, then, is the *underlying operational policy* that the Postal Service follows, not POM language per se.” *Id.* (quoting Carlson Opposition at 9).

The Postal Service quotes this language completely out of context. In my opposition, I explained that the Postal Service must seek an advisory opinion from the Commission before changing the nature of postal services. In its motion to dismiss, the Postal Service suggested that some issues in this complaint were mere “technical inconsistencies” that the Postal Service could cure by amending the POM to reflect actual practice. See Postal Service Answer at [13], ¶ 2. In response, I explained that the Postal Service must obtain an advisory opinion before changing the nature of postal services. Whether the POM is consistent with actual service levels is immaterial to determining *whether postal services*

have changed; the focus, for resolving the issue of whether postal services have changed, must be on the underlying operational policies and service levels.

Operational policies remain quite relevant, however, to determining whether customers are receiving services consistent with the policies of the Act. No inconsistency in my argument exists.

V. POLICY CHANGES

The Postal Service would like to engage in a skirmish over exactly how the policies governing holiday collections may or may not have changed. See, e.g., Postal Service Reply at 1–3. Specifically, the Postal Service criticizes my contention in my answer that the default policy now is not to process outgoing First-Class Mail on holidays. Postal Service Reply at 1–2. The Postal Service is responding to a discussion I presented in the context of demonstrating that a national change in the nature of holiday mail service has occurred. See Carlson Opposition at 3. I cited headquarters memoranda from 1999 provided in Attachment B to the Postal Service’s answer to my complaint that revealed that the policy on nearly every holiday in 1999, even many non-widely-observed holidays, was not to process outgoing mail. The Postal Service now seizes upon the fact that the memo for Martin Luther King, Jr.’s Birthday in 2000 contained slightly different language⁹ to claim that I was incorrect in my assertion that the default policy is not to process outgoing mail on holidays. Postal Service Reply at 1–2. As further support for this contention, the Postal Service now notes that the memos issued for various holidays in 2000, to which I did not have access, contain similar language. Postal Service Reply at 2, fn. 1.

Based on the additional information concerning memos issued in 2000, I accept the Postal Service’s contention that no default *policy* encourages postal managers not to process outgoing mail on holidays. However, in determining whether the Postal Service has changed the nature of postal services, the

⁹ Notably, this language still did not encourage processing of outgoing mail on the holiday.

Commission must focus on *actual practice*. The default *practice* has changed, and the current *practice* is *not* to process outgoing First-Class Mail on many holidays. The desire to cut expenses, rather than a delicate evaluation of the needs of local communities, surely has inspired the Postal Service's decision to eliminate collection and processing of outgoing First-Class Mail on many holidays.

To a large extent, the Postal Service is attempting to mislead the Commission by focusing on the *policy*, rather than *practice*. The Postal Service triggered section 3661 by *changing the nature of postal services* — holiday collection and processing — on a nationwide or substantially nationwide basis. Whether the Postal Service curtailed these services by changing policy officially or merely changing practice is immaterial for purposes of section 3661 because the Postal Service changed the nature of postal services. In enacting section 3661, Congress recognized that postal customers will be concerned primarily with the services they actually receive, not the policies requiring those services. Congress sought to protect customers from unilateral service changes by providing a public forum for evaluating these changes before they take effect. Thus, the Postal Service triggers section 3661 when it seeks to change postal *services*, not the policies to provide the services.

Postal Service policy is still the policy contained in the POM, the implementing regulations for the Act. The POM requires holiday collections and processing, with the possibility of exceptions. The Postal Service and I differ on our understanding of the meaning of exceptions. I submit that an exception to a rule or general principle is no longer an exception when the exception represents the normal rule or general principle. The Postal Service rarely collects and processes outgoing First-Class Mail on widely observed holidays and, apparently, many non-widely-observed holidays as well. In my assessment, the present absence of service on many holidays no longer constitutes a mere exception to the main policy; therefore, current service levels are inconsistent with the POM. In contrast, the Postal Service apparently is comfortable claiming

that the policy is to provide collection and processing of outgoing First-Class Mail on holidays — but, by the way, they rarely collect and process mail on holidays. By any reasonable interpretation, customers such as I are not receiving the POM-mandated level of collection and processing service on holidays.

VI. CONCLUSION

Rather than acknowledging that a national change in the nature of holiday postal services has occurred, the Postal Service pretends that little has changed. Instead, under the Postal Service's view, the current policy is unchanged: the Postal Service processes outgoing mail on holidays, but postal managers can deviate from this policy by exception. Certainly, the Postal Service acknowledges, more facilities "tend" not to process mail on holidays now than "tended" to process mail on holidays in the 1970's and 1980's. See Postal Service Answer at 6, ¶¶ 14 and 15. However, these trends are merely the result of the natural ebb and flow over the years of service-conscious postal managers carefully evaluating the needs of communities and deploying postal resources wisely. The Postal Service wants the Commission to believe that no change in the nature of postal service has occurred.

The Postal Service and I differ on this crucial factual issue. The change in the nature of collection and processing of outgoing First-Class Mail on holidays is considerably more discrete and substantial than the Postal Service has acknowledged in legal arguments in this complaint proceeding. The curtailment of holiday mail service occurred in the decade of the 1990's; in some parts of the country, the curtailment occurred as recently as 1999. To postal customers, the change was quite distinct and noticeable, not a vague trend that never could have constituted a change in the nature of postal services sufficient to trigger section 3661.

On this disputed issue of material fact, the Postal Service has offered no memos, no documents, and no testimony under oath to contradict my assertion that a change in the nature of postal services on a nationwide or substantially

nationwide basis has occurred. The Postal Service is attempting to dismiss my complaint based on mere assertions — even though memos confirm that headquarters policy discouraged holiday mail processing in many cities in 1999.

Factual disputes exist. Normal litigation procedures require that I have the opportunity to examine Postal Service documents and cross-examine witnesses under oath before the Commission considers dismissing my complaint based on disputed facts. The extent to which the Postal Service is not collecting and processing outgoing First-Class Mail on holidays is relevant to resolving my contention that I am not receiving the level of holiday postal services that the POM mandates. Similarly, the extent of the change in service levels in recent years is relevant to determining whether the Postal Service has changed the nature of postal services without first obtaining an advisory opinion under section 3661.

The Commission should deny the Postal Service's motion to dismiss and conduct an evidentiary hearing to resolve the factual and legal issues in this complaint concerning collections on Sundays, holidays, Christmas Eve, and New Year's Eve.

Respectfully submitted,




DOUGLAS F. CARLSON

Dated: January 4, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

January 4, 2001
Santa Cruz, California